

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

CODY WAYNE JOHNSTON,

Plaintiff,

vs.

JAMES SALMONSON,

Defendants.

CV 18-136-BLG-SPW

ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on October 11, 2018. (Doc. 4). The Magistrate recommended the Court dismiss Cody Wayne Johnston's petition for writ of habeas corpus (Doc. 1) without prejudice because it is unexhausted. (Doc. 4 at 9).

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendation. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d

422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error.

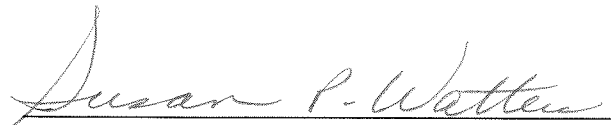
IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 4) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Johnston's petition for writ of habeas corpus (Doc. 1) is dismissed without prejudice because it unexhausted.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter judgment of dismissal.

IT IS FURTHER ORDERED a certificate of appealability is denied.

DATED this 14<sup>th</sup> day of November, 2018.

A handwritten signature in cursive script, reading "Susan P. Watters", is written over a horizontal line.

SUSAN P. WATTERS  
United States District Judge